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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,497	12/31/2003	Kristine B. Fuimaono	51678/AW/W112	1796
23363	7590	09/30/2008		
CHRISTIE, PARKER & HALE, LLP			EXAMINER	
PO BOX 7068			BOUCHELLE, LAURA A	
PASADENA, CA 91109-7068			ART UNIT	PAPER NUMBER
			3763	
MAIL DATE		DELIVERY MODE		
09/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,497

Applicant(s)

FUIMAONO ET AL.

Examiner

LAURA A. BOUCHELLE

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Pursuant to Pre-Brief Appeal Conference Decision of 7/22/08, the finality of the previous action has been withdrawn and a new action on the merits follows.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3, 5, 9-11, 13, 17, 22, 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims that the device comprises a generally rigid probe, but according to page 5 of the specification, for example, the body is described as being malleable enough to be bent by a physician. Furthermore, the inner and outer diameter ranges of the probe overlap, and therefore the wall of the probe may be so thin that it must be flexible.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 3-6, 9, 11-14, 17-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pomeranz et al (US 5800482) in view of Swanson et al (US 6428537). Pomeranz discloses an apparatus and method for linear ablation comprising a probe 64, irrigation openings 38, a sheath 44, coiled ribbon electrodes 40 (Col. 9, lines 13-17), irrigation tubing 36, a handle 12, and stiffening wire 104 (Col. 9, lines 33-34). The irrigation tube forms a loop. See Fig. 7. The device is formed of a malleable material. Pomeranz discloses a method of using the device

comprising the steps of opening the heart and ablating a linear lesion within a chamber of the patient's heart (Abstract).

5. Claims 1, 5, 9, 13, 17, 22, 29, 30 differ from Pomeranz in calling for the probe body to be rigid to resist bending. Swanson teaches a device for delivering electrical energy to the heart. Swanson teaches that it is known to use catheter-based devices with surgical probes that are not catheter-based as probes allow the physician to directly apply the electrode to the tissue (Col. 24, lines 20-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the catheter-based device of Swanson with a probe as taught by Swanson so that the physician can directly apply the electrodes to the patient.

6. Claims 2, 7, 8, 10, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pomeranz in view of Swanson. Claims 2, 7, 10, 15, 16 differ from Pomeranz in calling for the dimensions of the device. Where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. See MPEP 2144.04.

Response to Arguments

7. Applicant's arguments, see pre-appeal brief, filed 5/28/08, with respect to the rejection(s) of claim(s) 1-30 under Pomeranz have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pomeranz in view of Swanson.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Laura A Bouchelle
Examiner
Art Unit 3763

/L. A. B./
Examiner, Art Unit 3763